IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4438 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMIBEN JAYANTIBHAI PATEL - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MR BN PATEL for Petitioner(s) : 1,
MS ARCHNA RAVAL, ASST. GOVERNMENT PLEADER for Respondent(s) : 1 - 3.
MR AD OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 30/10/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner who was claiming appointment as a primary teacher has prayed for an appropriate writ, direction and/or order holding that the birth date of the petitioner to be considered as true and final is 31.5.1976 and

that the petitioner was and is absolutely eligible with regard to the completion of minimum age even as on 1.7.1994 as required by the advertisement and that she was and is entitled to be appointed as primary teacher by the respondent Nos.1 and 2 in the recruitment made pursuant to the advertisement at Annexure – A w.e.f. on or before 17.8.1996 when the selectees down below the merits were appointed.

2.The respondent Nos.1 and 2 invited applications for the post of primary teachers by giving advertisement in local news papers on 22.9.1994 and one of the eligibility criteria was that the candidate must have completed 18 years as on 1.7.1994. As the petitioner was qualified and having requisite qualifications, applied for the post of primary teacher with the respondents by submitting application and her case was also considered and she was at serial No.2 in the merit list. However, there was a discrepancy of date of birth in the School Leaving Certificate as well as the certificate issued by the Competent Authority

under the Birth and Death Registration Act and therefore, the petitioner was not appointed and the candidates below the petitioner in the merit list came to be appointed. It is not in dispute that as per the date of birth mentioned in the certificate issued by the Competent Authority under the provisions of the Birth and Death Registration Act, the petitioner had completed 18 years as on 1.7.1994, however, considering the date of birth as per the School Leaving Certificate, the petitioner was not appointed and therefore, the petitioner has preferred the present Special Civil Application for the aforesaid reliefs.

3.Shri B.N.Patel, learned advocate appearing on behalf of the petitioner has submitted that the action of the respondents in not appointing the petitioner to the post of primary teacher on the ground that the petitioner has not completed 18 years as on 1.7.1994 is contrary to the Government Resolution issued by the State Government which is at Annexure – D. He has relied upon the judgment of

the learned Single Judge of this Court passed in Special Civil Application No.8846 of 1992 on 15.7.1997 wherein, while dealing with the identical question, the learned Single Judge of this Court has directed to consider the date of birth as mentioned in the certificate issued by the Competent Authority under the provisions of the Birth and Death Registration Act.

4. Ms. Archna Raval, learned AGP appearing on behalf of the authorities is not in a position to dispute that the dispute is squarely covered by the decision of this Court in Special Civil Application No. 8846 of 1992 dated 15.7.1995 as well as another decision of this Court in case of ***Dipti Devi Dhirajlal Patel V/s. State of Gujarat and Another*** rendered on 2.12.1997 in Special Civil Application No.5668 of 1987.

5. Under the circumstances and for the reasons stated in the judgment and order passed by the learned Single Judge of this Court dated 15.7.1997 passed

in Special Civil Application No. 8846 of 1992 as well as considering the Government Resolution at Annexure – D, the action of the respondents in not appointing the petitioner to the post of primary teacher on the ground that she has not completed 18 years as on 1.7.1994 is errorneous and is required to be quashed and set aside. Accordingly, the petition is allowed. The action of the respondents in not appointing the petitioner to the post of primary teacher on the ground that the petitioner has not completed 18 years as on 1.7.1997 is hereby quashed and set aside and the respondents are directed to consider the case of the petitioner considering the position when the candidates below the petitioner in the merit list were appointed.

6. Rule is made absolute to the aforesaid extent with costs which is quantified at Rs.1500/-.

[M.R.SHAH, J.]

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